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SACRAMENTO COURTS
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

FAIR POLITICAL PRACTICES COMMISSION,
a state agency,

Plaintiff,

v.

AGUA CALIENTE BAND OF CAHUILLA
INDIANS, and DOES I-XX,

Defendants.

Case No. 02AS04545

DECLARATION OF MARK
KRAUSSE IN SUPPORT OF
OPPOSITION TO MOTION TO
QUASH

Date: December 20, 2002

Time: 2:00 p.m.

Dept: 53

Judge: Hon. Loren McMaster

Action Filed July 31, 2002

No Trial Date Set

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1 I, MARK KRAUSSE, declare as follows:

2 1. I am the Executive Director of the Fair Political Practices Commission. I was appointed
3 to this position in September of 2001. For sixteen months prior to being appointed Executive Director,
4 I was the Commission's Director of Governmental Relations. As Executive Director, I continue to
5 function as the agency's liaison to the Legislature, monitoring bill introductions and amendments,
6 writing bill analyses, meeting with legislators and testifying before legislative committees. Prior to
7 employment with the Commission, I was a Legislative Representative for the California Department of
8 Education (April 1999 to January 2000), Vice President of, and a registered lobbyist for, the
9 Association for California Tort Reform (August 1997 to December 1998), and Director of
10 Governmental Relations for The Doctors Company, a professional liability insurance company (April
11 1996 to August 1997). My training in the legislative process was provided during eight years as a
12 consultant in the state Senate and Assembly (March 1988 to March 1996). I left the legislative staff
13 briefly from August 1993 to March 1994 to serve as Legislative Manager for the State Teachers'
14 Retirement System. I make this declaration in support of the Fair Political Practices Commission's
15 Opposition to Defendant's Motion to Quash.

16 2. The California Legislature consists of a total of 120 elected officeholders, 80 members
17 of the Assembly, and 40 members of the Senate. Each state senator represents approximately 850,000
18 California residents, while each assembly member represents approximately 425,000 Californians. In
19 my experience, California legislators work diligently to stay in touch with their constituents, so that
20 they can represent the interests of their districts fully and fairly. Nevertheless, it is a fact of life that
21 legislators are able to communicate directly with only a small fraction of their constituents. As a result,
22 some constituents with legislative interests employ lobbyists to communicate their concerns in person
23 with members of the Legislature.

24 3. According to the California Secretary of State's office, approximately 1,000 individuals
25 are registered lobbyists in California. That figure includes only those who lobby at the state level; it
26 does not include those who lobby only in local jurisdictions. In my experience, professional lobbyists
27 have both the time and access to communicate directly with legislators and their staff. Lobbyists
28 generally possess valuable expertise in legislative institutions and processes, become known and

1 familiar to legislators, and many are effective communicators. Lobbyists are retained by a diverse
2 clientele, from small non-profit groups to multi-national corporations and even government bodies.

3 4. I have personally reviewed the four quarterly Form 635 lobbyist employer activity report
4 filings submitted by that the Agua Caliente Band of Cahuilla Indians for 2001. Although the tribe
5 reported over \$250,000 in payments to a lobbying firm for this period, it did not list any of the
6 legislative measures lobbied during that period. The tribe subsequently sent a letter, dated June 28,
7 2002, to the Secretary of State listing the bills and offices that the tribe lobbied in 2001, but did not
8 amend the quarterly lobbyist reports. A true and correct copy of this letter is attached to this
9 declaration as Exhibit A.

10 5. I have witnessed a marked growth in the presence of Native American Indian tribes in
11 the legislative process over the last decade, a development that has been well-publicized in the media
12 and which is generally known to the public. A number of tribes with a financial stake in gaming
13 operations have sought legislation to further their interests, and have retained prominent lobbyists and
14 lobbying firms to assist them. Bills directly involving gaming issues go to the Committees on
15 Governmental Organization in each house of the Legislature, and are sometimes "double-referred" to
16 other committees, such as Judiciary, Labor and Industrial Relations, Local Government or Revenue and
17 Taxation, when the subject matter of the bill is overlapping. Tribes with gaming interests also seek to
18 influence the outcome of legislation on matters not directly related to gaming, notably in the areas of
19 health and land use. Such legislation can affect many non-tribal citizens of this state, as well as tribal
20 members.

21 6. I have reviewed the bills listed on Exhibit A and those reported by the tribe on Form 635
22 filings for the first three quarters of 2002. Most of the measures relate to gaming on tribal land, or
23 issues specific to Native Americans, but three had broader implications for all Californians: AB 2118
24 (Dickerson), AB 930 (Vincent) and SB 1828 (Burton). AB 2118 (Chapter 368, Statutes of 2002)
25 delayed the applicability of the California Occupational Safety and Health Act to volunteer firefighters
26 until January 1, 2004. AB 930 would have authorized unspent State Lottery administrative funds to be
27 directed to lottery prizes, and would have allowed the State Lottery to use the bingo theme for a lottery
28

1 game. SB 1828 would have provided Native American cultural and religious sites special status under
2 the California Environmental Quality Act.

3 7. During the 2001-02 Session of the California Legislature, I followed the progress of
4 SB 1828. This bill sought to amend the California Environmental Quality Act (CEQA -- Public
5 Resources Code §21000 *et seq.*) to provide special status to Native American cultural and religious
6 sites. CEQA requires public agencies to identify the significant adverse environmental effects of
7 proposed land use actions and, to the extent feasible, either avoid or mitigate those effects. (CEQA
8 Guidelines, Cal. Code of Regulations, title 14, section 15002.) The special status afforded by SB 1828
9 to Native American cultural and religious sites, and the manner in which land could be designated as
10 such a site, was widely seen as having a potentially major impact on land use decisions throughout
11 California. For this reason, the bill was very controversial and generated a great deal of media
12 coverage and a great deal of attention from interest groups and lobbyists.

13 8. SB 1828 was heavily lobbied in the Legislature. It clearly was of concern to many
14 California Indian tribes, more than 30 of whom, including the Agua Caliente Tribal Council, expressly
15 registered their support for the bill. However, the bill had significance for many other citizens of
16 California, not just members of Indian tribes. Many other powerful groups, including the California
17 Chamber of Commerce, the California Association of Realtors, the California Mining Association, the
18 California Building Industry Association, the California Business Properties Association, and the
19 California Cattlemens Association, registered their opposition to the bill. I am able to determine that
20 fact by reviewing the committee and floor analyses of the bills, which list those groups who have
21 registered support or opposition, usually by a letter to the Legislature. A true and correct copy of one
22 such analysis, the final Senate floor analysis for SB 1828, written shortly before the Senate floor vote,
23 is attached as Exhibit B.

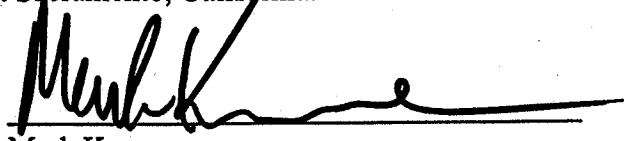
24 9 SB 1828 easily passed the Assembly, where it received a vote of 58 to 14; it required 41
25 aye votes for passage. It also passed the Senate, by a vote of 22 to 7. Governor Davis vetoed SB 1828,
26 however. A true and correct copy of the Governor's veto message, downloaded from the official
27 Legislature site, is attached as Exhibit C to this declaration. In the veto message the Governor
28 applauded the bill's intent to protect sacred tribal sites, but expressed concern over the broader

1 implications of the bill for development projects throughout California. The Governor stated "under
2 this bill, any site may be placed on the list [of specially protected, sacred sites] by anyone, no matter the
3 level of evidence that the site is sacred. Nonetheless, simply placing a site on the list gives it all the
4 protections afforded by the bill." Expressing concern that the bill "gives Native Americans influence
5 over the CEQA process that no other party, agency or governmental body now has," the Governor went
6 on to say "it is not clear that we need to enlist CEQA to protect sacred sites."

7 10. Without the lobbyist employer reports, a person interested in finding legislation that a
8 particular group monitored or actively lobbied would have to search through several versions of
9 analyses on each of the approximately 7,000 legislative measures introduced each session. The most
10 common method of conducting this kind of research is to use the Legislative Counsel's bill tracking
11 system at www.leginfo.ca.gov. Individual legislators, and legislative committees, are not required to
12 keep track of visits by lobbyists; only the lobbyist and lobbyist employer are required to track and
13 report such activity. Moreover, not every lobbying effort is reflected in a bill analysis, and lobbying
14 efforts directed at statewide officers (such as the Governor and Attorney General) may not be reflected
15 in any publicly available document. Therefore, without an accurate lobbyist employer report on file, it
16 is virtually impossible to know what bills and offices were lobbied by any particular group. Indeed, of
17 the 37 legislative measures lobbied by the Agua Caliente Band of Cahuilla Indians in the first seven
18 quarters of the 2001-02 legislative session, their position is listed in the analyses of only three—AB
19 978 (Steinberg), SB 41 (Alpert), and SB 1828 (Burton).

20 I declare under penalty of perjury under the laws of the state of California that the foregoing is
21 true and correct of my own knowledge, and that if called upon to testify to the facts set forth herein, I
22 would and could competently testify thereto.

23 Executed this 10th day of December, 2002, at Sacramento, California.

24 
25 Mark Krausse
26 Fair Political Practices Commission
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